Supreme Court, U. S.
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MAY 24 1976
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 75-1700

DR. SCOTT SMART, *Petitioner*,

v.

TEXAS POWER AND LIGHT COMPANY, ET AL., *Respondents*.

ADDENDUM OF EXHIBITS OF JUDGMENT OF THE DISTRICT COURT, COURT OF APPEALS, FIFTH CIRCUIT AND ORDER DISPOSING OF PETITION FOR REHEARING

S. L. LEWIS
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Counsel for Petitioner

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

DR. SCOTT SMART

V.

TEXAS POWER AND LIGHT CO. AND J. E. ABERNATHY

CA 3-74-171-B

ORDER OF DISMISSAL

The Supreme Court of the United States having on May 12, 1975, vacated the order of the three-judge court before which the above cause was heard and having remanded the case to the United States District Court for the Northern District of Texas "so that a fresh order may be entered from which a timely appeal may be taken to the United States Court of Appeals," the following order is therefore entered.

After due consideration of the pleadings, exhibits, admissions, and briefs filed in the above numbered and styled cause, the court is of the opinion that the plaintiff does not have standing to bring this suit. Standing would have to be predicated on some right in the plaintiff to take part in the condemnation proceedings instituted in Texas State Court in Collin County on September 1, 1970, since this suit is based on a challenge to the constitutionality of the statutes under which that condemnation took place. Legal right to take part in the condemnation proceedings

could vest only on proper notice to Texas Power and Light that the plaintiff had an interest in the land in question. No notice came to the defendant, however.

Proper notice could have come from two sources. The first would be notice through public record; and the second would be notice imputed to Texas Power and Light through knowledge of an agent gained while acting in the principals' business.

It can be seen from the record that notice through public documents showed no ownership in plaintiff Dr. Scott Smart at the time the condemnation proceedings were instituted on September 1, 1970. Ownership of the land in question was in the name of Dr. Don Smart, Scott Smart's brother. The correction deeds filed on March 27, 1973 can of course have no legal effect upon proceedings which took place two and one-half years earlier.

The other route by which plaintiff claims notice to have come to Texas Power and Light is through J. E. Abernathy, an agent of Texas Power & Light. Abernathy acted as attorney to TP&L in the condemnation suit, and he had also been the attorney for the people who sold the land in question to Dr. Don Smart in December, 1969. It is contended that notice was imputed to TP&L through the knowledge of J. E. Abernathy regarding the details of that land transaction.

As a general rule, knowledge of an agent acquired in the performance of his principal's work is imputed to the principal. *Odom v. Insurance Company of State of Pennsylvania,* 441 S.W.2d 584 (Tex. Civ. App. — Austin

1969), aff'd, 455 S.W.2d 195 (1970). However, Texas follows a limited view of imputation where an agent gains knowledge which may relate to the work of his principal, where such knowledge comes to the agent in business outside that of the principal. *Security State Bank of Pearsall v. Cunningham,* 296 S.W. 678 (Tex. Civ. App. — Eastland 1927); *Merrill v. Southwest Telegraph and Telephone,* 73 S.W. 422 (Tex. Civ. App. — 1903), writ ref'd; *Lane v. DeBode,* 69 S.W. 437 (Tex. Civ. App. — 1902). Secret equities within the knowledge of an agent, when gained outside the scope of the principal's business, cannot be imputed to the principal. *Taylor v. Taylor,* 29 S.W. 105 (Tex. Sup. Ct. 1895). Therefore, if this case presents a situation where Abernathy knew of an interest of Dr. Scott Smart in the land which was condemned, that would be insufficient to charge the defendant Texas Power and Light with knowledge of that interest.

Further knowledge through notice to an agent is asserted by the plaintiff. TP&L admitted in evidence the fact that Abernathy imparted his knowledge of the sales contract in the sale of the land to Don Smart to an appraiser of TP&L. However, the sales contract, and all other documents which would necessarily have come to Abernathy's attention in acting as attorney in the sale of the land, show no interest of Scott Smart in the property which was condemned.

On every theory put forth by the plaintiff attempting to place in TP&L knowledge of Dr. Scott Smart's alleged interest in the land, the proof fails. The court is therefore bound to refrain from deciding any issues attempted to

be brought before it in this suit because of lack of standing of the plaintiff to have brought it. It is therefore ORDERED, ADJUDGED, and DECREED that this case be and is hereby DISMISSED.

Signed this the 17 day of June, 1975.

SARAH T. HUGHES
United States District Judge

Dr. Scott SMART, Plaintiff-Appellant,

v.

TEXAS POWER AND LIGHT COMPANY et al.,
Defendants-Appellees,

State of Texas, Intervenor.

No. 75-3304
Summary Calendar.*

United States Court of Appeals,
Fifth Circuit.

Jan. 14, 1976.

Owner of an undivided one-quarter interest in property subject to condemnation proceedings pending before the Texas state courts filed suit challenging on constitutional and other grounds the state condemnation proceedings. The United States District Court for the Northern District of Texas, at Dallas, Sarah Tilghman Hughes, J., dismissed the suit for want of standing, and plaintiff appealed. The Court of Appeals held that where the interest of plaintiff in the property subject to the state condemnation proceedings was not recorded until two and one-half years after the commencement of said proceedings, and where the condemnor had no knowledge of plaintiff's interest in the land, plaintiff had no right to take part in the condemnation proceedings and thus lacked standing to bring the instant federal suit.

Affirmed.

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*Rule 18, 5 Cir., see *Isbell Enterprises, Inc. v. Citizens Casualty Company of New York et al.*, 5 Cir., 1970, 431 F.2d 409, Part I.

Constitutional Law 42(2)
Eminent Domain 242

Where the one-quarter interest of plaintiff in certain property subject to condemnation proceedings pending before the Texas state courts was not recorded until two and one-half years after the commencement of the proceedings, and where the condemnor had no knowledge of plaintiff's interest in the land, plaintiff had no right to take part in the condemnation proceedings and thus lacked standing to bring federal suit challenging the condemnation proceeding on constitutional and other grounds.

Appeal from the United States District Court for the Northern District of Texas.

Before THORNBERRY, MORGAN and RONEY, Circuit Judges.

PER CURIAM:

Plaintiff-appellant holds an undivided one-quarter interest in certain property subject to condemnation proceedings now pending before the Texas state courts. His interest was not recorded until two and one-half years after the commencement of the proceedings. Plaintiff in this suit challenges on constitutional and other grounds the state condemnation proceedings, to which he was not a party. His suit was dismissed for want of standing. The district court observed that standing is predicated on some right in the plaintiff to take part in the condemnation proceedings. Legal right to take part depends on proper notice to appellee Texas Power and Light Company that the plaintiff had an interest in the land. The facts of this case, the court held, do not support the argument that Texas Power and Light Company had knowledge of Plaintiff's interest in the land. We agree, and affirm dismissal for lack of standing.

See a companion suit brought by Dr. Don Smart, the brother of the plaintiff here, Dr. Scott Smart, concerning constitutional challenges to the same condemnation proceeding. *Smart v. Texas Power and Light Company et al.*, — F.2d — (5th Cir. 1975).

Affirmed.

Adm. Office, U.S. Courts—West Publishing Company, Saint Paul, Minn.

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

EDWARD W. WADSWORTH
CLERK

600 CAMP STREET
NEW ORLEANS, LA. 70130
TELEPHONE 504-589-6514

February 25, 1976

TO ALL COUNSEL OF RECORD

No. 75-3304—Dr. Scott Smart vs. Texas Power and Light Company, ET AL; State of Texas

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Dear Counsel:

This is to advise that an order has this day been entered denying the petition( ) for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

EDWARD W. WADSWORTH, *Clerk*

by Susan M. Gravors
Deputy Clerk

/smg

cc: Mr. S. L. Lewis
Mr. Robert E. Burns
Mr. David R. Thomas